

Revoking Pro-Mimeograph, Pro. No. 217, Dated
October 19, 1921, and Outlining Treatment
of Narcotic Drug Addiction Permissible Under
the Harrison Narcotic Law.

TREASURY DEPARTMENT,
BUREAU OF INTERNAL REVENUE,
OFFICE OF FEDERAL PROHIBITION COMMISSIONER,
Washington, D. C., May 21, 1923.

Pro-Mimeograph.

Pro. No. 316.

To narcotic agents in charge and others concerned:

Pro-Mimeograph, Pro. No. 217, dated October 19, 1921, is hereby revoked, and the following outline of procedure to be followed in prescribing and dispensing narcotic drugs is issued for the guidance of narcotic agents in charge, and others concerned. This pamphlet is intended to be advisory only and to anticipate and answer questions arising in the minds of practitioners in regard to the law and regulations governing the prescribing and dispensing of narcotic drugs as interpreted by the courts.

The regulations governing this subject are contained in article 117, Regulations 35, as amended by Treasury Decision 3426, and read as follows:

“Purpose of issue.—A prescription, in order to be effective in legalizing the possession of unstamped narcotic drugs and eliminating the necessity for use of order forms, must be issued for legitimate medical purposes. An order purporting to be a prescription issued to an addict or habitual user of narcotics, not in the course of professional treatment in an attempted cure of the habit, but for the purpose of providing the user with narcotics sufficient to keep him comfortable by maintaining his customary use is not a prescription within the meaning and intent of the act; and the persons filling and receiving drugs under such an order, as well as the person issuing it, will be regarded as guilty of violation of the law. (See T. D. 2809, dated Mar. 20, 1919.)

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*“Exceptions.—*Exceptions to this rule may be properly recognized (1) in the treatment of incurable disease, such as cancer, advanced tuberculosis, and other diseases well recognized as coming within the class, where the physician directly in charge of bona fide patient suffering from such disease prescribes for such patient, in the course of his professional practice and strictly for legitimate medical purposes, and in so prescribing, indorses upon the prescription that the drug is dispensed in the treatment of an incurable disease (or if he prefers he may indorse upon the prescription ‘Exception (1), article 117’); and (2) where the attending physician prescribes for an aged and infirm addict whose collapse from the withdrawal of the drug would result in death and in which case he indorses upon the prescription that the patient is aged and infirm, giving age, and that the drug is necessary to sustain life (or if he prefers he may indorse upon the prescription ‘Exception (2), article 117’).”

General.

It is impossible to state an inflexible rule which will cover all cases, and this outline must, therefore, be general in nature and subject to modification through further interpretation of the law by the courts. The bureau is not charged with the duty of laying down any fixed rule as to the furnishing of drugs or the frequency of the prescriptions in any particular case.¹ This responsibility rests upon the physician in charge of the case.² While the primary responsibility rests upon the physician in charge, a corresponding liability also rests upon the druggist who knowingly fills an improper prescription or order whereby an addict is supplied with narcotics merely for the purpose

¹ In a prosecution against a physician for violating Harrison narcotic law by dispensing narcotics to habitual users of the drugs, the exclusion of a letter from the Commissioner of Internal Revenue in response to a query by defendant physician as to dispensing of narcotics held proper. (*Thompson v. United States*, 258 Fed. 196.)

² Indictment which charged that defendant, a practicing physician, did feloniously, etc., sell, exchange, barter, and give away a specified quantity of morphine sulphate to a person named, not pursuant to an order on a form issued by the Commissioner of Internal Revenue, but by issuing and dispensing a prescription to such person, not a patient of defendant physician, which morphine was dispensed and distributed by defendant physician, not in the course of his professional practice only, was sufficient. (*Jin Fuey Moy v. United States*, 254 U. S. 189.)

satisfying his addiction.³ Caution should be exercised to avoid being imposed upon by unscrupulous persons, and too much credence should not be given to the unsupported statements of the addict himself, because the confirmed addict will go far beyond the truth in an attempt to secure an ample supply of narcotic drugs with which to satisfy his cravings.

The good faith of the physician and the bona fides of his treatment in a given case will be established by the facts and circumstances of the case and the consensus of medical opinion with regard thereto, based on the experience of the medical profession in cases of similar nature.⁴ Physicians will be charged with violation of the

³ (a) The acts of the principal become the acts of the accessory or aider, and he may be charged as having done the act himself, and be indicted and punished accordingly, under Penal Code, section 332, making the accessory a principal. (*DiPreta v. United States*, 270 Fed. 73.)

(b) A person dealing in drugs is required to ascertain at his peril whether that which he sells comes within the statute, so that an indictment for violation of that section need not allege that defendant knew the character of the drug sold. (*United States v. Balint*, 66 L. Ed. 352, S. C. R. 301.)

(c) Notwithstanding Harrison Narcotic Act, section 2, exception (b), excepting sales of the prohibited drugs on the written prescription of a registered physician, a sale by a druggist, who knows that the prescription was issued to gratify the holder's appetite and not to cure disease or alleviate suffering, violates the law, and the physician issuing the prescription, knowing it is to be filled by a druggist having such knowledge, aids and abets the violation.

Knowledge by a druggist that a prescription under the Harrison narcotic law was issued to gratify the holder's appetite, and not to cure disease or alleviate suffering, is essential to guilt, and negligent failure to inquire will not take the place of knowledge.

On a trial for aiding and abetting violation of the Harrison narcotic law, exceptions to the charge on the ground that there was no evidence of the facts hypothesized by the court in its instruction respecting knowledge, and that knowledge was immaterial when the sale was made on the prescription of a registered physician, did not raise the point, presented on appeal, that the charge authorized conviction, though the druggist had no actual knowledge if he negligently failed to make inquiry. (*Doremus v. United States*, 262 Fed. 849.)

⁴ (a) Expert testimony as to proper method of treating addicts admissible. (*Reeves v. United States*, 263 Fed. 690.)

(b) In a prosecution under Harrison Narcotic Act, section 2, against physician who sold large quantities of narcotics to habitual users of drug, medical testimony as to recognized methods among physicians for treating persons addicted to the use of narcotic drugs was admissible for the purpose of showing that the accused physician did not come within the exception as to physicians dispensing drugs in the course of their practice, for, while the act is in the guise of a revenue measure it was intended to accomplish a moral purpose. (*Thompson v. United States*, 258 Fed. 196.)

law if through carelessness or lack of sufficient personal attention the patient secures more narcotic drugs than are necessary for medical treatment and devotes part of his supply to satisfy addiction.⁵

Use of Narcotics in the Treatment of Disease Without Reference to the Question of Addiction.

Without reference to the question of addiction, physician acting in accordance with proper medical practice may prescribe or dispense narcotics for the relief of acute pain or for any acute condition, such as influenza, pneumonia, renal calculi, broken limbs, etc.

Use of Narcotics in the Treatment of Incurable Disease.

A reputable physician directly in charge of bona fide patients suffering from diseases known to be incurable, such as cancer, advanced tuberculosis, and other diseases well recognized as coming within this class, may in the course of his professional practice, and strictly for legitimate medical purposes, dispense or prescribe narcotic drugs for such diseases, provided the patients are personally attended by the physician who regulates the dosage, and prescribes no quantity greater than that ordinarily recognized by members of his profession to be sufficient for the proper treatment of the given case.⁶ The danger of supplying persons suffering from incurable

⁵ An order issued by a practicing and registered physician for morphine to an habitual user thereof, the order not being issued by him in the course of professional treatment in the attempted cure of the habit, but being issued for the purpose of providing the user with morphine sufficient to keep him comfortable by maintaining his customary use, is not a physician's prescription within exception (b) of section 2 of the Harrison Narcotic Act. (*Webb & Goldbaum v. United States*, 249 U. S. 96.)

⁶ (a) In prosecution of physicians for having violated and conspired to violate the Harrison Narcotic Act, the trial court in his general charge properly submitted an issue as to the good faith of defendants in issuing their prescriptions to supposed patients, since the defendants could only protect themselves if the prescriptions were issued legitimately in their practice. (*Melanson v. United States*, 266 Fed. 783.)

(b) In a prosecution for violation of Harrison Narcotic Act, section 2, by selling narcotic drugs, not in pursuance of written orders on the prescribed forms, evidence that defendant, although a physician registered under the act, did not dispense the drugs in good faith in the course of his professional practice, which would bring him within exception (a) of the statute, but sold the same to gratify the appetite of the purchasers, was competent and relevant, and such issue was properly submitted to the jury. (*Oakshette v. United States*, 260 Fed. 830.)

diseases with a supply of narcotics must be borne in mind, because such persons may use the narcotics wrongfully, either by taking excessive quantities or by disposing of a portion of the drugs in their possession to other addicts or persons not lawfully entitled thereto.⁷ The physician should indorse upon the prescription that the drug is dispensed in the treatment of an incurable disease, if he prefers he may indorse upon the prescription "Exception 1, article 117."⁸

Use of Narcotics in the Treatment of Addiction Only.

Mere addiction alone is not recognized as an incurable disease. It seems necessary, however, to divide the addicts not suffering from an incurable disease into two

⁷ (a) A careful review of the decisions as they exist at the present time makes clear the fact that when a physician is charged with unlawfully selling or prescribing drugs under the Harrison Act, the case turns largely upon his good faith in prescribing drugs to his regular patients for maladies requiring the administration of the drug or whether he prescribed for persons seeking his professional aid merely to procure the drug. In the latter case the physician might, perhaps, in a single instance afford temporary relief for one whose condition demanded immediate treatment. To go further than this would enable every doctor to do just what the defendant did here—furnish drugs to addicts or afford opportunity to them to procure all the narcotics they desired—as unrestrained they would go from one physician to another, and thus quickly destroy the whole purpose of the act in question. (*Louis D. Barbot v. United States*, 273 Fed. 919.)

(b) The purpose of antinarcotic act is to confine the distribution of narcotics to the regular and lawful course of professional practice, and not every order therefor written by a duly registered physician in the form of a prescription is necessarily a prescription within the exception. If the offense is a statutory one, and intent or knowledge is not made an element of it, the indictment need not charge such intent or knowledge. An indictment charging that defendant, a duly registered physician, by means of three prescriptions sold to one whom he knew to be a drug addict, at one time heroin, morphine, and cocaine equivalent to more than 3,000 ordinary doses, without directions or restrictions as to the use thereof by the addict, shows the sale was not within the exception to antinarcotic act. (*United States v. Behrman*, 66 L. Ed. 345; 42 S. C. R. 303.)

(c) A physician held chargeable with the offense of selling opium in violation of Harrison Act, section 2, where for a consideration he issued an order or prescription for opium not in the regular course of practice, but to an addict, for a prohibited use, although the prescription was filled by a dealer who acted in good faith and without knowledge that it was wrongfully used. (*United States v. Emil H. Adams*, 270 Fed. 585.)

A physician who writes prescriptions for unusual quantities of drugs or a dealer who fills such a prescription is guilty of an offense unless the prescription indicates the necessity for such an unusual quantity. (*United States v. Curtis*, 229 Fed. 288.)

classes: (a) Those suffering from senility or the infirmities attendant upon old age, who are confirmed addicts of years standing, and who, in the opinion of a reputable physician in charge, require a minimum amount of narcotics in order to sustain life; and (b) those whose addiction is not complicated by incurable disease or by the infirmities attendant upon old age.

(a) *Aged and infirm addict.*—Addicts suffering from senility or the infirmities attendant upon old age and who are confirmed addicts of years standing may be, for the purpose of enforcing the law, treated as addicts suffering from incurable diseases. In such cases, where narcotic drugs are necessary in order to sustain life, a reputable physician may prescribe or dispense the minimum amount necessary to meet the absolute needs of the patient. In this class of cases the physician issuing the prescription should make a statement on the prescription to the effect that the patient is aged and infirm, giving age, and certifying that the drug is necessary to sustain life, or, if he prefers, he may indorse upon the prescription "Exception 2, article 117."

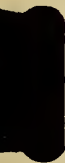
(b) *The ordinary addict.*—It is well established that the ordinary case of addiction yields to proper treatment, and that addicts will remain permanently cured when drug taking is stopped and they are otherwise physically restored to health and strengthened in will power. This bureau has never sanctioned or approved the so-called reductive ambulatory treatment of addiction, however, for the reason that where the addict controls the dosage he will not be benefited or cured. Medical authorities agree that the treatment of addiction, with a view to effecting a cure, which makes no provision for confinement while the drug is being withdrawn, is a failure, except in a relatively small number of cases where the addict is possessed of a much greater degree of will power than that of the ordinary addict.

Special advice to cover cases not falling within these instructions will, upon request, be furnished by this office.

R. A. HAYNES,
Prohibition Commissioner.

Approved:

D. H. BLAIR,
Commissioner of Internal Revenue.



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